IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 86 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH Sd/-
and
Hon'ble MR.JUSTICE D.A.MEHTA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

INDOKEM LTD
Versus
JT INDUSTRIES COMMISSIONER INCENTIVE OR SUCCESSOR

Appearance:
1. Special Civil Application No. 86 of 2000
MR IM KAPUR for Petitioner No. 1
MR UR BHATT, AGP. for Respondents.

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE D.A.MEHTA

Date of decision: 10/09/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE D.A.MEHTA)

1 Rule. Heard Mr.R.D.Pathak for Mr. I.M.Kapoor, learned Counsel for the petitioner and Mr.U.R.Bhatt, Assistant Government Pleader for the respondents. By consent of the learned Counsel appearing for the respective parties the matter is taken up for final hearing today as this petition is required to be disposed of on a short ground.

2 The petitioner which is a Public Limited Company became entitled to cash subsidy being a new industry established in backward area. This entitlement was by virtue of resolution dated 5/5/1986 of the Government of Gujarat. Thereafter, this scheme for cash subsidy was replaced by a scheme for Additional Sales Tax Exemption as an alternative to cash subsidy by virtue of resolution dated 19/7/1974. The petitioner had become entitled to receive cash subsidy of Rs.20 lacs in view of eligibility certificate dated 7/12/1994. However, as the State Government had not disbursed the said cash subsidy, and as the petitioner was entitled to opt for additional sales tax exemption, the petitioner applied on 12/2/1996 to sanction sales tax exemption in lieu of the entitlement of cash subsidy. Accordingly, the petitioner's application to the Addl. 0Industries Commissioner (Extension) for granting 150% of the entitled cash subsidy as sales tax exemption amounting to Rs.30 lacs was made on 9/9/1997. The said application was followed up by no due certificate issued by the Sales Tax Officer on 27/10/1997.

3 On 18/2/1998 the respondent No.1 issued show cause notice to the petitioner stating that a contradictory no due certificate was produced by the petitioner and why action should not be taken against the petitioner. Thereafter the correspondence ensued between respondent No.1 and the petitioner resting at reply dated 20/10/1999 of the respondent No.1, whereby according to him it was not possible to grant the sales tax exemption to the extent of Rs.30 lacs as the petitioner company was in arrears of sales tax, and therefore, the petitioner was entitled to be granted sales tax exemption only to the tune of Rs.20 lacs i.e. at 100% only in lieu of cash subsidy of Rs.20 lacs for which the petitioner was originally entitled to.

4 The petitioner has approached this Court seeking appropriate writ for quashing and setting aside the decisions of respondent No.1 dated 4/11/1997, 10/6/1999, 5/7/1999 and 20/10/1999 and has sought further direction

to respondent No.1 to issue the necessary eligibility certificate to the petitioner to the extent of Rs.30 lacs under entry 175A of the Notification issued under section 49(2) of the Gujarat Sales Tax Act,1969.

5 Mr.R.D.Pathak, learned Counsel appearing on behalf of Mr.I.M.Kapoor, Advocate, has made a statement to the effect that the dues which were stated in the application for sales tax exemption have been wiped out by the appellate order dated 16/8/1999 and as a consequence the petitioner assessee has become entitled to refund. In view of this position, as the original assessment and consequential demands have merged into the appellate order which has resulted into net refund, the respondent No.1 should have no objection to issue the eligibility certificate for sales tax exemption to the tune of Rs.30 lacs.

6 We, therefore, quash and set aside the orders made by respondent No.1 at Annexures A/6-A, A/11, A/13 and A/15. We, further direct respondent No.1 to issue eligibility certificate to the tune of Rs.30 lacs instead of Rs.20 lacs as has been done by him. Rule is made absolute in the aforesaid terms with no order as to costs.

Sd/- Sd/-

(M.S.Shah, J) (D.A.Mehta,J)

m.m.bhatt